

The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT H. SCHEER

Appeal No. 2006-1854
Application No. 09/867,174
Technology Center 3600

ON BRIEF

Before OWENS, NAPPI and FETTING, **Administrative Patent Judges**.

NAPPI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 11 through 20. Claims 1 through 10 have been canceled. For the reasons stated *infra* we will not sustain the examiner's rejection of claims 11 through 20.

THE INVENTION

The invention relates to supply chain management, specifically a method of selecting a fulfillment plan for moving an item within a supply chain. See page 1 of appellant's specification. Claim 11 is representative of the invention and is reproduced below:

11. A computer readable media having instructions executable by a computer for use in selecting a fulfillment plan for moving an item within a supply chain distributed over a plurality of geographic locations, the instructions performing steps comprising:

receiving an order for an item;

in response to receipt of the order for the item constructing a plurality of alternative fulfillment plans for moving the item from a sourcing point to each of the plurality of geographic locations within the supply chain;

evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria; and

selecting for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria, the selected one of the plurality of alternative fulfillment plan being used to position the item at one of the plurality of geographic locations within the supply chain thereby making the item available for use in meeting the order.

THE REFERENCES

The references relied upon by the examiner are:

Dietrich	5,216,593	Jun. 01, 1993
Altendahl	6,571,213	May 27, 2003 (Dec. 30, 1999)
Landvater	6,609,101	Aug. 19, 2003 (Mar. 25, 2000)

THE REJECTION AT ISSUE

Claims 11, 12, and 14 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Altendahl in view of Landvater. Claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Altendahl in view of Landvater and Dietrich. Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellant and the examiner, for the reasons stated *infra* we will not sustain the examiner's rejections of claims 11 through 20 under 35 U.S.C. § 103.

Appellant argues, on page 5 of the brief, that Altendahl teaches a system where a single geographic destination for an item is required to be first established. As such, appellant argues, on pages 5 and 6 of the brief, that Altendahl does not:

teach, or suggest at least the claimed elements of constructing a plurality of alternative fulfillment plans for moving an item that is the subject of an order from a sourcing point to each of plural geographic locations within the supply chain, evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria, and then selecting for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria to thereby position the item that is the subject of the order at one of the plural geographic locations within the supply chain to thereby make the item available to meet the order. (emphasis original)

Further, on pages 6 and 7 of the brief, appellant argues that Landvater discloses a system to forecast replenishment needs at specific locations, i.e., determine the quantity of items to be shipped to a plurality of locations. On page 7 of the brief, appellant asserts that Landvater “is simply silent as to any method for constructing or selecting a plan to move the forecast amount of items at the forecast time to each of the retail stores.” As such, appellant concludes that Landvater fails to suggest the desirability of constructing a plurality of alternative fulfillment plans for each of a plurality of geographic locations within the supply chain as claimed. Appellant asserts, on page 8 of the brief, that if Altendahl and Landvater were combined, Landvater’s teaching would provide the destinations for the packages to be shipped and Altendahl’s teaching would provide a system of selecting the route to the destinations. Appellant asserts, on page 9 of the brief, that this would not be the claimed system “in which the geographic location in which an item that is the subject of the order is to be positioned is not known until after the instructions evaluate each of the *construed alternative fulfillment plans for each of a plurality of geographic locations within a supply chain* against a predetermined criteria.” (emphasis original).

The examiner’s response to appellant’s arguments is on pages 7 through 14 of the answer. On pages 7 and 8 of the answer, the examiner finds that Altendahl teaches all of the limitations of claim 11 “*except that [a] plurality of geographical destinations are considered instead of one.*” (emphasis original) The examiner finds that Altendahl suggests that fulfillment plans are constructed for plural parcels which could be destined for different addresses. On pages 8 and 9 of the answer, the examiner finds that Landvater teaches moving an item or items to replenish inventories in a plurality of stores in a supply chain. Based upon these findings the examiner states, on page 9 of the answer that:

the teachings of Landvater are applicable to the Altendahl's example of a business company ordering computer systems on [sic: from] a seller because it would be obvious to one of an ordinary skilled [sic.] in the art that a business company can have several installations/stores at different geographical locations requiring [the] same items and supplies so that they are ordered simultaneously for all the branches to save cost of operation and get price advantage.

The examiner states, on page 12 of the answer, that the order or sequence of the steps in a method is not a requirement unless the claim specially recites them as so. Further, on page 14 of the answer, the examiner states:

In response to the applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *the geographic location in which an item that is the subject of the order is to be positioned is not known until after the instructions evaluate each of the constructed alternative fulfillment plans for each of a plurality of geographic locations within a supply chain against a predetermined criteria.*) are not recited in the rejected claim(s). (emphasis original)

We disagree with the examiner's claim interpretation and consequently with the examiner's determination that the claims are obvious over the combination of Altendahl and Landvater. We concur with the examiner that the claim does not directly recite "the geographic location in which an item that is the subject of the order is to be positioned is not known until after the instructions evaluate each of the constructed alternative fulfillment plans for each of a plurality of geographic locations within a supply chain against a predetermined criteria." Nonetheless we find that the scope of the claim is limited to such a system. Claim 11 recites:

in response to receipt of the order for the item constructing a plurality of alternative fulfillment plans for moving the item from a sourcing point to each of the plurality of geographic locations within the supply chain;

evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria; and

selecting for implementation one of the constructed plurality of alternative fulfillment plans that most closely meets the predetermined criteria.

We hold that the claim necessarily requires the steps to be performed in the order recited. The alternative fulfillment plans are constructed in response to receipt of an order, the evaluation of the fulfillment plans can not occur until after the fulfillment plans are constructed and the selection of the fulfillment plans can not occur until they are evaluated against the criteria. Further, claim 11 recites “the selected one of the plurality of alternative fulfillment plan being used to position the item at one of the plurality of geographic locations within the supply chain,” thus claim 11 recites a system that determines the location for an ordered item to be moved to in response to evaluating and selecting a plan to move the ordered item from a sourcing point to more than one location. We do not find that, either Altendahl or Landvater teach or suggest such a feature.

We find that Altendahl teaches a system which evaluates a plurality of methods of shipping a package and selects the appropriate shipping method based upon a set of rules. While Altendahl does teach that the rules may cover a plurality of locations (see for example, figure 6 and discussion in column 12, lines 19 through 39), we do not find that Altendahl teaches or suggests that in response to an order, more than one destination is evaluated for the same order and a determination is made as to which destination the item ordered is to be shipped. We find that Landvater teaches a system for forecasting a retail store’s needs for items. See abstract. While Landvater does teach the items may be shipped to different locations in the supply chain, we do not find that Landvater, in response to an order, constructs alternative fulfillment plans to ship the ordered item to different locations and then select the location based upon an evaluation of the fulfillment plan. Thus, we do not find that the combination of Altendahl and Landvater teach or suggest the invention as claimed in independent claim 11. Claims 12 and 14 through 20 depend upon claim 11. Accordingly, we will not sustain the examiner’s rejection of claim 11, 12, 14 through 20 under 35 U.S.C. § 103 as being unpatentable over Altendahl in view of Landvater.

The examiner rejected claim 13 under 35 U.S.C. § 103 as being unpatentable over Altendahl in view of Landvater and Dietrich. Claim 13 depends upon claim 11. The examiner has not asserted nor do we find that Dietrich teaches or suggests modifying Altendahl or Landvater to construct alternative fulfillment plans to ship the ordered item to different locations and then select the location based upon an evaluation of the fulfillment plan. Accordingly, we will not sustain the examiner's rejection of claim 13 for the reasons discussed *supra* with respect to claim 11.

Accordingly, we will not sustain the examiner's rejection of claims 11 through 20, under 35 U.S.C. § 103. The decision of the examiner is reversed.

REVERSED

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

ROBERT E. NAPPI
Administrative Patent Judge

ANTON W. FETTING
Administrative Patent Judge

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